

REMARKS

This paper is submitted in response to the final Office Action mailed on April 21, 2008. Claims 1-40 remain in the application. Claims 1, 2, 10, and 30 have been amended and new claims 32-40 have been added. Applicants note and appreciate the Examiner's indication of allowability of claims 30 and 31. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

Claim Amendments

Each of claims 1, 2, 10, and 30 has been amended to improve grammatical clarity and/or consistency with the language of other claims of the application.

Information Disclosure Statement

The Examiner indicates that the Information Disclosure Statement ("IDS") filed 12/21/2007 failed to comply with the provisions of 37 CFR § 1.97, 1.98, and MPEP § 609 because the references are not properly listed, further indicating that each patent or NPL "should be separately listed." Applicants respectfully submit that the referenced IDS complies with the formatting requirements for publications set forth in 37 CFR § 1.98 (b)(5) and MPEP § 609. More specifically, each of the cited references (categorized as "publications") is identified by publisher, author (if any), title, relevant pages, date and place of publication.

Neither MPEP § 609 nor 37 CFR § 1.97 nor 1.98 explicitly identifies a specific format to be followed to identify litigation-related documents such as the ones at issue here. In this regard, the undersigned counsel has called and left a voice mail on October 19, 2008, at Examiner's telephone number identified in the Office Action, asking for guidance on what Examiner deems to be the required formatting for the allegedly incorrectly cited court documents.

If Applicants have failed to appreciate the asserted defect of the referenced IDS, or if there is a specific format Examiner deems as required for the documents at issue, Applicants respectfully request that Examiner promptly contacts the undersigned counsel such that the IDS may be re-filed.

Objection to the Drawings

The drawings are objected to under 37 CFR § 1.83(a) for an asserted failure to show the limitations of claims 30 and 31 therein. Applicants respectfully submit that the objection is in error, as the limitations of claims 30 and 31 are clearly shown in FIG. 10 of the Application. As described in Application at p.2, lines 23-26 and p. 26-27, reference numeral 138(a) designates the claimed apex and reference numeral 138(b) designates the claimed trough between ribs. Accordingly, Applicants respectfully request withdrawal of the objection to the drawings.

Rejection under 35 U.S.C. § 112

Claims 1-31 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is grounded on the language of

claim 1, the only independent claim of this group of rejected claims. Claim 1 has been amended to more clearly recite the claimed invention and thus now recites “a surface coating applied to said body front and rear faces and respectively providing an exposed front surface and an exposed rear surface of said roadside post.” (emphasis added).

Accordingly, Applicants respectfully submit that the rejection of claim 1 has been overcome and the claim should therefore be allowed. Applicants further submit that the rejections of dependent claims 2-31 have been also overcome by virtue of this amendment to claim 1, from which claims 2-31 depend, and these claims should therefore also be allowed.

Rejections under 35 U.S.C. § 102(b)

Claims 1, 2, 7, 9, 13-18, 21, 24, 25, and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,362,305 to Pellowski (“Pellowski”). Claim 1 is the only independent claim of this group of rejected claims. Applicants traverse these rejections.

Pellowski does not disclose a roadside post as contended by the Examiner. Strip element (10) referred to by the Examiner as a roadside post is in the nature of a lane marker that is located on or in a road surface to both visibly and audibly signal the location of traffic lanes within the bounds of a road. The fact that Pellowski discloses such a lane marker located on a road, rather than a roadside post located on the roadside is evident throughout the disclosure of Pellowski.

Firstly, in the Abstract of the Disclosure, at column 1, lines 9-13, the disclosure is described in terms of “an arcuate metal strip having one end imbedded in a hardenable material in the highway with the other end extending upwardly to provide a

visible marking device and to engage the underside of an automobile to provide an audible signalling device.”

Similarly, the Field of the Invention (column 1, lines 26 to 35) is also described in terms of “marking various lanes of multi-lane freeways and the like, and where there is merging or exiting traffic to prevent vehicles from driving in the wrong lane and causing accidents.” The Description of the Prior Art (column 1, lines 36 to 47) also makes it clear that the field to which Pellowski relates is devices that are located on the road or highway. Specifically, prior art devices are described as being “either temporarily standing on the highway surface and easily displaced or are fixedly attached to the highway”.

The fact that the strip element (10) of Pellowski is a lane marker located on a roadway is further reflected in the Summary of the Invention, at column 1, lines 50 to 55, which states: “This invention relates generally to roadway or traffic marking devices and more particularly it relates to a novel resilient highway marking device for visibly and audibly signalling the location of traffic lanes, highway center lines, and the like, and to means for protecting the device to reduce or prevent wear and breakage thereof.”

Throughout the description of Pellowski, it is emphasized that the strip element (10) is located in or on the road/highway rather than at the roadside. See, for example, the following passages of Pellowski:

- a) Column 1, lines 39 to 45, which describes that the lower end portion of the strip element is secured in the roadway, rather than at the roadside.
- b) Column 1, lines 45 to 51, which describes the method of installation of the strip element by drilling a recess in the surface of the highway, then positioning the

lower end portion of the strip element within the recess and pouring a hardenable material within the recess.

- c) Column 3, lines 43 to 71, which describes a strip receiving means (20) positioned on the surface of the highway adjacent the strip element (10). A second strip receiving means (25), described at Column 3, lines 72 to Column 4, line 13, is located on the surface of the highway on the opposing side of the strip element (10).
- d) Column 4, lines 14 to 34, which describes the strip receiving means as being anchored by way of anchor points (30) received in the expansion joints of the highway and further affixed to the surface of the highway by an adhesive.
- e) Column 4, lines 48 to 57, which describes the marking devices (i.e., strip elements) as being located adjacent the opposite shoulders of the traffic lanes. It is clear from Figure 1 that these locations adjacent the shoulders of the traffic lanes are still clearly on the road surface, rather than at the roadside.
- f) In each of the figures of Pellowski, the strip elements (10) are clearly shown to be located on the road surface.

The strip element (10) of Pellowski cannot be described as a “post,” let alone a “roadside post.” A post is an elongate element that has the function of supporting another object. In the context of a roadside post, the post will support a functional roadside component, such as a delineator or sign. Accordingly, Applicants disclose a roadside post, for example, at page 1, lines 4-9 of the Application. The strip

element of Pellowski, by contrast, does not function to support anything. It merely serves as a visible and audible lane marker.

Further, the strip element (10) of Pellowski is clearly of insufficient proportions to function as a roadside post. To function as a roadside post, supporting a delineator, a roadside post would typically need to be of a height of at least one meter, while to support a road sign, heights well in excess of one meter would be typical. Column 2, lines 31 to 38 of Pellowski describe that the top of the strip element (10) is of sufficient height to be struck by the bumper or the front and/or underpart of the vehicle. Given that it is intended that the strip element be regularly impacted by vehicles changing lanes, one of ordinary skill in the art would consider that the strip elements would be made close to this minimum height, which would be significantly less than the height of a roadside post.

The disclosure of U.S. Patent No. 3,312,156 to Pellowski ("Pellowski I") of which Pellowski represents a Continuation-in-Part, was recently considered by the Federal Court of Australia in proceedings relating to infringement and validity of three Australian innovation patents corresponding to the present application. As part of the evidence in those proceedings, an Affidavit was sworn on 23 June 2008 by Laurence Bede Dowling, commenting on the disclosure of Pellowski I. A copy of the Affidavit ("exhibit 1") is attached herewith. Mr Dowling is a civil engineer with over thirty years experience in the roadside safety products industry in Australia, having held various positions in an Australian state road authority. Referring to the aforementioned Affidavit, at paragraphs 8 through 12, Mr. Dowling proffers his understanding, as a person of ordinary skill in the art, of the disclosure of Pellowski I. Mr Dowling concludes, in his Affidavit, that Pellowski does not disclose a roadside post. Also

attached herewith is a copy ("exhibit 2") of the Decision of the Federal Court of Australia in the proceedings noted above, *Delnorth Pty Ltd v Dura-Post (Aust.) Pty Ltd* [2008] FCA 1225, in which it was held that Pellowski I does not disclose a roadside post. See page 12 of the Decision.

Accordingly, Applicants respectfully submit that Pellowski fails to anticipate claim 1 and the claim is therefore allowable. Further, Applicants respectfully submit that each of claims 2, 7, 9, 13-18, 21, 24, 25 and 28 is also allowable at least by virtue of depending from allowable claim 1.

Moreover, with specific reference to dependent claim 9, Applicants submit that Pellowski does not disclose the body as having a channel shaped transverse cross-section comprising a central web and two lateral flanges. The strip element (10) of Pellowski has a relatively flat, arcuate cross-section. This arcuate cross-section cannot reasonably be considered to form a channel, and certainly does not have a distinct central web and two lateral flanges as set forth in claim 9. Accordingly, Applicants respectfully submit that dependent claim 9 is allowable for these reasons as well.

With specific reference to dependent claims 13 and 14, the lower end (11) of the strip element (10) in Pellowski is not tapered as contended by the Examiner. As is clearly apparent from Figure 3, the lower end (11) of the strip element (10) has a constant width with a notch (15) being formed at the longitudinal end of the strip element. While the lower end of the strip element (10) may be formed with two sharp points at either edge of the lower end, the lower end itself cannot be considered to be tapered, having a constant width. Further, while the notch (15) forming the sharp points may allow the post to be pressed into a hardenable material, prior to hardening of that material, this arrangement would not enable the post to readily be driven into a ground

surface. While a taper of the body first end would deflect material in the ground away from the body of the post, when driving the body into the ground, the two opposing sharpened points of Pellowski would drive the material in the ground toward the center of the body of the post, toward the center of the notch (15), thereby further inhibiting driving of the body of the post into the ground. Pellowski therefore does not disclose a first end of the body that is tapered, and much less a first end that is adapted to be driven into the ground, as respectively set forth in these claims. Accordingly, Applicants respectfully submit that dependent claims 13 and 14 are allowable for these reasons as well.

With specific reference to dependent claims 15 and 16, Pellowski fails to disclose a mark indicative of the location of the surface of the ground when the post is driven into the ground to a design depth, as set forth in these claims. The holes (16) referred to by the Examiner can clearly be seen in Figures 3 and 5 to be located well below the ground surface. As noted by the Examiner, these holes are to aid in holding the post firmly in the ground (Office Action at p. 5). If the holes were to be indicative of the location of the surface of the ground, they would clearly have no role in holding the post firmly in the ground. Thus, Pellowski does not disclose a hole or any other mark located so as to be indicative of the surface of the ground. Accordingly, Applicants respectfully submit that dependent claims 15 and 16 are also allowable for these reasons.

With specific reference to dependent claims 17 and 24, Pellowski fails to disclose a roadside post installation comprising a roadside post or a method in which the post is driven into the ground. In the strip element installation of Pellowski, a recess is first formed in the surface of the road and the strip element is retained within the

recess within a body of hardenable material. While it is suggested at column 3, lines 20 to 27, referred to by the Examiner, that the strip element (10) may be inserted into the hardenable material after first pouring the hardenable material into the recess, there is no teaching or even a suggestion that the strip element may be driven into the ground. Further, there is no teaching or suggestion of the installation being in the roadside. The Examiner's conclusion that method claim 24 is anticipated by Pellowski is therefore similarly flawed. Accordingly, Applicants respectfully submit that dependent claims 17 and 24 are allowable for these reasons as well.

Rejection under 35 U.S.C. § 103(a)

Claims 1-6, 9, and 10-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,238,322 to Stirtz ("Stirtz") in view of U.S. Patent No. 2,646,969 to Hendrickson ("Hendrickson") and U.S. Patent No. 6,267,529 to Mudryk et al. ("Mudryk"). Claim 1 is the only independent claim of this group of rejected claims. Applicants traverse these rejections.

The Examiner admits that Stirtz fails to disclose the use of spring steel and a surface coating, and thus turns respectively to Hendrickson and Mudryk to provide a teaching of these missing elements. Applicants submit that at least the asserted combination of the teachings of Stirtz with those of Hendrickson is improper. Stirtz discloses a road marker in the form of an elongate member (10) in the form of an elongate strip of material of a plastic or resin composition. At column 2 lines 4 to 10, Stirtz teaches the use of a thermoplastic material to facilitate field repairs of a badly bent or deformed marker "by heating the marker to a high enough temperature whereby the plastic of the marker becomes workable." This is to be contrasted with presently known

markers, described at column 1, lines 14 to 21, described as having their usefulness impaired when they become permanently bent or deformed when run over.

From the contrast in Stirtz between thermoplastic markers that are described as being field repairable and presently known markers which are suggested not to be field repairable, it is evident that the known markers referred to by Stirtz are steel markers. Steel clearly requires heating to temperatures well beyond those that could be achieved in the field to enable workability of the steel. Further, Applicants note the Examiner's comments that Stirtz recites the advantages of using a heat treatable material, however, Stirtz is not referring to any heat treatable material, but only to materials that are heat treatable in the field as noted above. This is clearly not the case with steel. Further, spring steel would generally require heating to much higher temperatures than, for example, mild steel from which conventional roadside posts are formed, to provide workability. Accordingly, Stirtz clearly teaches directly away from forming the marker from a steel material and the asserted combination of this disclosure with the teachings of Hendrickson is thus improper.

Moreover, Hendrickson discloses a highway guard with support members formed of multiple leaf spring elements. Hendrickson is not directed to a roadside post, and is not directed to any element that is elastically bendable through 90°. The support members of Hendrickson are clearly designed to be heavy, rigid elements that are not designed to elastically bend to any notable degree when impacted by a vehicle. For example, column 1, lines 44 to 46 states that an object of Hendrickson is to provide support anchoring means (i.e., the support members) "of great strength and rigidity." At column 2, lines 13 to 15, the support members are described as being formed of "heavy steel in the form of leaf springs" and further described at column 2, lines 17 as providing

a “rigid anchor.” The support members of Hendrickson are designed to absorb large amounts of energy when impacted, and release that energy to deflect the impacting vehicle back into the roadway. *See, for example*, column 2, lines 18 to 21.

The action of transferring large amounts of energy from an impacting vehicle to the support members, and the subsequent action of transferring that energy back to the vehicle as the energy is released from the support members, would result in significant damage to the vehicle. This is entirely at odds with the present invention whereby the body of the roadside post is specifically designed not to absorb large amounts of energy, but to be elastically bendable through 90°, the post is thus able to elastically collapse on impact, thereby enabling a vehicle impacting the roadside post to drive over the roadside post without any significant damage. Hendrickson thus clearly teaches away from the bending taught in Stirtz and the respective teachings of these two patents are therefore not properly combinable for these reasons as well.

Further, Hendrickson fails to teach or suggest the use of sheet spring steel with the heavy leaf springs utilized in Hendrickson clearly being in the nature of plate steel, rather than sheet steel. Further, multiple plates are utilized, rather than a single sheet as set forth in claim 1. The Examiner's reference to use of heat treated spring steel in Hendrickson, and implying the advantage of using heat treated spring steel is the same as the advantage of using the heat treatable plastics material of Stirtz, is flawed. Clearly, the heat treatment of the spring steel utilized in Hendrickson is heat treatment conducted at extreme elevated temperatures to increase the stiffness of the spring steel, rather than heat treatment at relatively low temperatures in the field to increase the workability of a plastics material.

A person of ordinary skill in the art would clearly not consider the rigid support member of Hendrickson to be of any relevance when considering the design of a flexible roadside post. If the person of ordinary skill in the art were to modify the roadside post of Stirtz to form it of heat treated spring steel of the type and configuration taught by Hendrickson, being multiple heavy leaf springs, to improve impact energy absorption and release as suggested by the Examiner, a rigid roadside post would be the result. Such a post would not be elastically bendable through 90° as set forth in claim 1, and would clearly result in significant damage to any vehicle impacting the same.

In addition to the foregoing, attached herewith is a copy ("exhibit 3") of a Statutory Declaration executed by Laurence Bede Dowling on October 22, 2007, as part of opposition proceedings before the Australian Patent Office in relation to the corresponding Australian standard patent application No. 2004249786. In this Declaration, Mr. Dowling discusses the surprising results obtained when he tested a roadside post described by the above-referenced Australian patent application. In Mr. Dowling's opinion, the roadside post described in the Australian Application represented a "quantum leap in the development of roadside posts that the industry had been seeking for many years." See paragraph 11 of this Declaration. The claimed roadside post of claim 1 of the present application, accordingly, cannot be obvious.

Consistent with the above-discussed Declaration by Mr. Dowling, attached herewith is a copy ("exhibit 4"), of another Statutory Declaration executed by Gabriel Tana, also as part of the above-referenced opposition proceedings, on October 30, 2007. This Declaration further underscores the non-obviousness of the invention recited in claim 1. In this Declaration, at paragraphs 2 through 5, Mr. Gabriel Tana, the

General Manager of Sales and Marketing for a distributor of roadside guide posts in Australia, discusses the commercial success of the roadside post described in the above-referenced Australian patent application. Mr. Tana states, for example, that in the first full financial year of distribution of the roadside post covered by this patent, their unit sales overtook the combined sales of plastic guide posts and rigid steel guide posts, with the roadside posts covered by the Australian patent application representing 52% of the total unit sales of guide posts sold by the distributor. See paragraph 5 of this Declaration. The claimed roadside post of claim 1 of the present application, accordingly, cannot be obvious.

Respective Declarations under 37 CFR § 1.132 consistent with the Affidavit and Statutory Declaration by Mr. Dowling and with the Statutory Declaration by Mr. Tana, will be filed subsequent to filing of this response.

Accordingly, the asserted combination of the teachings of Stirtz and Hendrickson is improper and the rejection of claim 1 should therefore be withdrawn. Moreover, each of claims 2-6, 9, and 10-28 is also allowable at least by virtue of depending from an allowable claim.

Moreover, with specific reference to dependent claim 2, the support member of Stirtz is clearly not elastically bendable through 90° to either side of a longitudinal axis. The configuration of the marker of Stirtz would effectively result, if impacted from the left in Figure 2, with the marker being folded back on itself through a sharp 180° angle. With the marker being formed of a thermoplastic material, it would seem highly likely that the marker would fail, and there is certainly no teaching or suggestion that the marker would be elastically bendable through 90° from the unbent

state depicted in Figure 2 to the right side of the longitudinal axis. Claim 2 is therefore also allowable for these reasons.

With specific reference to dependent claims 3-6, the use of heat treated spring steel disclosed by Hendrickson is, as noted above, for an entirely different purpose to that of the sheet spring steel of which the body of the roadside post recited in these claims is formed. Accordingly, if a person of ordinary skill in the art were to consider the disclosure of Hendrickson and form a roadside post utilizing spring steel as taught by Hendrickson, to improve the impact energy absorption and release, a different resulting form of spring steel would arguably result. Accordingly, Applicants respectfully submit that each of claims 3-6 is therefore allowable also for these reasons.

With specific reference to dependent claim 16, Mudryk does not disclose a mark in the form of a hole indicative of the location of the surface of the ground when the post is driven into the ground to a designed depth. While the Examiner refers to holes (54) in the rigid base member (4) of Mudryk, there are no such holes having reference numeral (54). In any event, the holes in the rigid base (4) are clearly not in the body of the post as set forth in claim 16. Further, the holes are clearly intended to be located well above the surface of the ground as these holes are required to receive fasteners (12) for attachment of the attachment member (6) after the base (4) has been driven into the ground. See column 3, lines 56 to 61.

With specific reference to dependent claims 18-21, neither Stirtz, Hendrickson nor Mudryk, either alone or in combination, teach or even suggest formation of a recess in the ground immediately adjacent the body to allow uninhibited bending of the body. Applicants note the Examiner's reference to Mudryk, at column 1, lines 19 to 21, to posts being "installed by driving them into the ground, or by securing

them in boreholes dug into the ground.” The Examiner has overlooked, however, the remainder of that passage stating that the posts are secured in the boreholes with cement if required. A person of ordinary skill in the art will clearly understand the use of the terminology “securing” and the use of cement, that the post will fully fill the borehole dug into the ground, such that no recess will remain, or alternatively that cement will be used to fill any recess left between the post and wall of the borehole. The emphasis on rigidly securing a post within the borehole teaches directly away from leaving a recess to allow uninhibited bending of the body. The Examiner’s rejections of claims 25 to 28 are similarly flawed and claims 18-21 and 25-28 are therefore allowable for the foregoing reasons as well.

With specific reference to dependent claims 22 and 23, neither Stirtz, Hendrickson, nor Mudryk, alone or in combination, teach or suggest locating the entire base beneath the surface of the ground. Mudryk teaches, at column 3, lines 55 to 60, that the upper portion of the base (4) must remain above the ground to enable attachment of the first attachment member (6) by means of fasteners (12) through holes provides in the base (4). Similarly, Mudryk also clearly fails to suggest locating the top of the base beneath the surface of the ground, as set forth in dependent claim 23. Accordingly, Applicants respectfully submit that each of dependent claims 22 and 23 is allowable for these reasons as well.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stirtz in view of Hendrickson and Mudryk and further in view of U.S. Patent No. 6,375,385 to Kennedy (“Kennedy”). Each of claims 7 and 8 depends from allowable independent claim 1 and is allowable at least by virtue of depending from an allowable claim. Moreover, Mudryk fails to teach or even suggest the dimensional

features recited in claim 8 and this claim is also allowable for this reason. Applicants respectfully request withdrawal of these rejections.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pellowski in view of U.S. Patent No. 2,155,349 to Mathesius et al. ("Mathesius"). Each of claims 3 and 4 depends from allowable independent claim 1 and is therefore allowable at least by virtue of depending from an allowable claim.

Moreover, while Mathesius discloses the use of steel having a Rockwell hardness of not more than 50c, there is no teaching or suggestion of the use of steel having a Rockwell hardness between 40c and 47c, let alone the use of spring steel falling within this hardness range. Accordingly, claims dependent claims 3 and 4 are also allowable for this reason and Applicants respectfully request withdrawal of these rejections.

Claims 5, 6, 8, 10, 19, 20, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pellowski. Each of these claims depends from allowable independent claim 1 and is therefore allowable at least by virtue of depending from an allowable claim.

Moreover, a person of ordinary skill in the art would not consider the disclosure of Pellowski when developing a roadside post, given the nature of Pellowski in disclosing a small strip element forming a lane marker on the road for providing a visual and audible demarcation between the lanes, as opposed to a roadside post. The design and purpose of Pellowski, being a small strip element designed to be regularly impacted by vehicles changing lanes, would result in it not being considered to be relevant by a person of ordinary skill in the art. Moreover, following the directions of Pellowski would result in quite a different configuration. While Pellowski discloses the

use of a recess, the recess is formed in the surface of the highway, as noted by the Examiner, rather than in the ground in a roadside location. Accordingly, Applicants respectfully request withdrawal of the rejections of claims 5, 6, 8, 10, 19, 20, 26, and 27 for these reasons as well.

Claims 11, 12, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pellowski in view of Mudryk. Each of these rejected claims depends from claim 1 and is allowable at least by virtue of depending from an allowable claim.

Moreover, a person of ordinary skill in the art would not contemplate providing the roadside post of Pellowski with a rigid base member to facilitate driving the roadside post into hard soil, as is commonly found adjacent roadways, as suggested by the Examiner, given that Pellowski is not directed to the installation of roadside posts adjacent roadways. As discussed above, Pellowski is directed to road markers in the form of strip elements that are mounted on or in roadways, and not in the ground adjacent roadways. Further, Mudryk neither teaches nor suggests locating a base beneath the surface of the ground as set forth in claims 22 and 23, as discussed above. Accordingly, Applicants respectfully submit that each of these claims is also allowable for these reasons and request withdrawal of the rejections in this regard.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Pellowski in view of U.S. Patent No. RE 32,045 to Schmanski ("Schmanski"). Claim 29 depends from independent claim 1 and is allowable at least by virtue of depending from an allowable claim.

Moreover, a person of ordinary skill in the art would not consider modifying the strip element of Pellowski to include ribs as disclosed in Schmanski in view of the

different purpose of the lane markers of Pellowski and their relatively small size. The inclusion of ribs in the relatively small strip elements of Pellowski, that are designed to be regularly impacted by vehicles changing lanes, would tend to provide a strip element of excessive stiffness for its intended purpose of being regularly impacted. Accordingly, Applicants respectfully submit that claim 29 is also allowable for these reasons and request withdrawal of the rejections in this regard.

New Claims

Claims 32-40 have been added by way of this response. Claims 32 and 33 depend from claim 1. Claim 32 introduces the recitation of a barb of the body located toward the first end thereof and projecting toward an opposing second end of the body. No new matter is introduced by way of this recitation, as it is fully supported in the specification. *See, for example*, Application at p. 6, lines 14-18, and FIGS. 5 and 7. Claim 33 recites the body including a taper at a first end of the body and extending outwardly from a central portion of the first end. No new matter is introduced by way of this recitation, as it is fully supported in the specification. *See, for example*, Application at FIG. 5. Applicants respectfully submit that each of claims 32 and 33 is allowable at least by virtue of depending from an allowable claim and request early notice of allowance in this regard. Moreover, the notch (15) at the lower end portion (11) of the strip element (10) in Pellowski does not define a taper as recited in claim 33, as the two sharp points do not extend outwardly from a central portion of the end portion (11) but rather from a periphery thereof, as seen in Figure 3. Accordingly, dependent claim 33 is allowable for this reason as well.

Claim 34 is an independent claim and incorporates language similar to that already found in claim 1 as well as a recitation of the body of the roadside post being configured to be supported by direct engagement with the ground. No new matter is introduced by way of this recitation, as it is fully supported in the specification. *See, for example*, Application at p.4, line 24 through p.5, line 7; p.6, lines 11-18; and FIGS. 1, 3, 4, and 7.

Unlike the claimed roadside post of claim 34, the marker in Pellowski is not configured to be supported by direct engagement with the ground. To the contrary, the marker of Pellowski has a strip element (10) that is supported in the ground through a base of hardenable material (13) that could be either any thermal setting plastic or concrete and which is capable of adhering to concrete and which is water proof, quick hardening, easily removable by dissolving and resistant to salt and other chemicals (Pellowski at col. 2, line 39 through col. 3, line 3). In other words, the strip element (10) is supported by a base having very specific technical requirements and therefore is not configured to be supported by direct engagement with the ground. Accordingly, Applicants respectfully submit that claim 34 is allowable over Pellowski and early notice of allowance of the claim is earnestly solicited.

Each of new claims 35-40 recites language already found in the original and/or previously presented claims and therefore introduces no new matter thereby. Moreover, Applicants respectfully submit that each of these new claims recites a combination of elements neither disclosed nor obvious over the cited references. Applicants thus earnestly request early notice of allowance of these claims as well.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this effect is earnestly solicited. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants do not believe that any fees are due in connection with this response other than the extension fee, Request for Continued Examination fee and excess claims fees. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

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